IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9191 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KETAN HARJARIMAL SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of order of detention dated 7th July, 2000, with respect to detenu passed by respondent No.1 in exercise of powers conferred

upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (In short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on one Prohibition case lodged against the petitioner-detenu in Prohibition Station, Western Region of Ahmedabad City on 3rd July, 2000, and that case is pending with the Investigating Officer for investigation. The detaining authority has also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the said two statements on 6th July, 2000, and then on the very next day i.e. on 7th July, 2000, he passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms.Kachhavah, learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act but looking to the respective dates of statements, date of verification of said statements and date of passing order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Article 22(5) of the Constitution of India. She has placed reliance on case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT AND OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. He is required to do such exercise for verifying the correctness and genuineness of the facts stated in said statements. He has also to verify as to whether that persons are fictitious or real one and, therefore, the privilege claimed by him is not genuine. Looking to the facts and circumstances of the present case, this present case squarely falls within the four corners of the case cited by Ms.Kachhavah, and therefore, the order of detention is bad in law, and illegal and same is required to be quashed and set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dated 7th July, 2000, passed by respondent No.1 is quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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